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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

CR.A.NO. 1062 OF 2001.

APPELLANT (IN JAIL) : Yuvraj @ Guddu,
S/o. Sukh Lal,
aged about 20 years,
R/o. Prem Nagar Kondagaon,
Distt. Bastar (C.G.).

V E R S U S

RESPONDENT : State of Chhattisgarh,
through : Distt. Magistrate
Jagdalpur, Distt. Bastar.

CRIMINAL APPEAL UNDER SECTION 374 OF THE CRIMINAL PROCEDURE CODE.

4272 30-10-01 Petition on behalf of Shri Santosh Bhanarkar ... Advocate R. to AR(S)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No.1062 सन् 2001

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI D.R. DESHMUKH, JJ.

1-7-2005

Shri R.S. Patel, counsel for the appellant.

Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral.

Learned counsel for the appellant submitted that as the accused/appellant has been in custody for more than 5 five years, therefore, the appeal may be heard finally to which learned Panel Lawyer has no objection.

At the request of counsel for the appellant, heard the appeal finally.

By this appeal the accused/appellant has questioned the legality of the judgment of conviction and sentence dated 29-9-2001 passed by the 3rd Additional Sessions Judge, Bastar at Jagdalpur in S.T. No.335/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for committing murder of Someshwar convicted him under Section 302 of the I.P.C. and sentenced him to undergo imprisonment for life.

The prosecution story, in brief, necessary for the disposal of this appeal is that on 15-5-2000 at about 10 pm in the night Santosh PW-2, Ramchandra Usendi PW-3 along with deceased Someshwar

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

were going to bring food for one Inder who was admitted in the hospital Kondagaon. When they reached near the house of Santosh, all of a sudden, the accused came from behind and attacked Someshwar Dubey with an axe on the right side of the head, as a result of which Someshwar fell down on the spot and blood started oozing out of the injury. Santosh and Ramchandra took Someshwar to the hospital and lodged the report at the Police Station Kondagaon. Police registered the case under Section 307 of the I.P.C. Someshwar was sent for medical examination where he was medically examined. He received injuries on the frontal and parietal bone and it was opined by the doctor that the injuries were grievous in nature. The Investigating Officer took into possession blood stained soil and plain soil from the place of occurrence and the next day injured Someshwar was taken to Seven Hills Hospital, Visakhapatnam where he was admitted for treatment. However, on 23-5-2000 at about 3.30 am Someshwar succumbed to the injuries. Merg intimation was given to the Police Station. The postmortem of the body of Someshwar was conducted at the hospital, Visakhapatnam. The Investigating Officer prepared the site plan of the scene of occurrence and got it prepared from Patwari.

After completion of the investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate,

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Kondagaon who committed the case to the Sessions Judge, Bastar at Jagdalpur, who in turn, transferred the case to the 3rd Additional Sessions Judge, Bastar at Jagdalpur for its disposal.

The prosecution in order to prove the offence against the accused/appellant examined 11 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which the accused pleaded innocence and stated that he is innocent and he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused and also after perusal of the records and placing reliance on the evidence of PW-2 and PW-3 convicted and sentenced the accused/appellant in the manner mentioned above.

We have heard Shri R.S. Patel, learned counsel for the accused/appellant and Shri Akhil Mishra, learned Panel Lawyer for the State/respondent.

As far as the nature of death of the deceased being homicidal is concerned, the same is not disputed by learned counsel for the accused/appellant. PW-9 Dr. Y. Jagannath Rao has stated that he was working in the Medical College, Vishakhapatnam. On 24-5-2000 he conducted the postmortem on the dead body of the deceased on the request of Police Station, Kondagaon and he noticed that there was horse shoe shaped surgical incised wound on the right parietal

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

region of right side of head and other injury was on the same place in the size of 7 cm x 4cm x 3 cm deep and it was stitched wound. In the opinion of the doctor, the cause of death of the deceased was respiratory and circulatory failure due to injury to brain and fracture of skull due to head injury. In view of the above evidence, it stands proved that the nature of death of the deceased was homicidal.

As far as involvement of the accused/appellant in committing the crime in question is concerned, learned counsel for the accused/appellant has not questioned the same and argued that as per the evidence of PW-2 Santosh Kumar and PW-3 Ramchandra the accused/appellant, all of a sudden, came from behind and assaulted the deceased with an iron rod and he assaulted only once, therefore, there was no intention on the part of the accused to commit murder of Someshwar. He further argued that it is evident from the evidence of these two witnesses. There was no animosity between the accused and the deceased. He further argued that the prosecution has not been able to bring on record motive of the crime and the deceased died on 23-5-2000 whereas, injury was caused on 15-5-2000 that is 8 days before, therefore, offence does not travel beyond Section 304-II of the I.P.C.

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We have perused the evidence of PW-2 and PW-3 who have categorically stated that at the time of the incident they were going to bring food for one Inder who was hospitalized and when they reached near the house of Santosh, the accused/appellant came from behind and assaulted the deceased on his head with an iron rod. They have also stated that they do not know why the accused/appellant assaulted the deceased. There was no animosity between the accused and the deceased. Therefore, the involvement of the accused/appellant in the crime in question stands proved by the evidence of PW-2 and PW-3.

Now, coming to the question as to which offence is made out against the accused/appellant, it is admitted position that the accused/appellant assaulted the deceased only once and the prosecution has not been able to bring on record anything regarding motive of the crime and the fact that the accused assaulted the deceased with the intention to commit his murder. Moreover, the incident took place on 15-5-2000 and the deceased died in the hospital on 23-5-2000. In the circumstances, we are of the considered opinion that it cannot be inferred from the above evidence that the accused assaulted the deceased with the intention to commit his murder. But it is definite and it can be inferred that the manner in which the accused assaulted the deceased with an iron

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rod on his head, he was having knowledge that on account of such assault the death of Someshwar is likely to be caused, therefore, offence under Section 304-II of the I.P.C. is made out.

In the result, the appeal is partly allowed. The conviction and sentence imposed on the appellant under Section 302 of the I.P.C. are set aside. Instead thereof, the accused/appellant is convicted for commission of the offence under Section 304-II of the I.P.C. and sentenced to undergo R.I. for 7 years. The accused/appellant will be entitled for the set off for the period for which he has been in custody during investigation and trial.

In view of this order, M.(Cr.)P. No.1345/2005 stands disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

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